

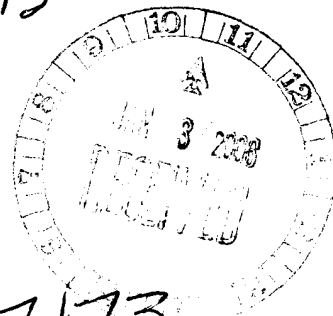
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

ORIGINAL

215472

STB Docket No. AB-6 (Sub-No. 430X)

BNSF RAILWAY COMPANY  
- ABANDONMENT EXEMPTION -  
IN OKLAHOMA COUNTY, OK



STB Docket No. AB-1040X

215473

STILLWATER CENTRAL RAILROAD, INC.  
- ABANDONMENT EXEMPTION -  
IN OKLAHOMA COUNTY, OK

PETITIONERS' REPLY TO APPLICANTS'  
MOTION TO REDESIGNATE HIGHLY CONFIDENTIAL MATERIALS  
OR, ALTERNATIVELY, TO ENGAGE IN DISCOVERY OF  
OF ENTITIES DESIGNATED HIGHLY CONFIDENTIAL

SENTINEL  
OFFICE OF THE ATTORNEY GENERAL

Public Records

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BIO-ENERGY WELLNESS CENTER  
NORTH AMERICAN TRANSPORTATION INSTITUTE

Dated: January 3, 2006

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

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Petitioners, Bio-Energy Wellness Center and North American Transportation Institute, pursuant to 49 C.F.R. 1104.13(a), reply to the Motion, filed December 29, 2005, by Applicants, BNSF Railway Company and Stillwater Central Railroad, Inc., seeking the reclassification "Highly Confidential" materials filed with the Board under seal or, alternative, to pursue discovery against persons not parties to these proceedings.

Petitioners respectfully submit that Applicants are making a mountain out of a molehill. There is need for neither reclassifying the "Highly Confidential" materials filed under seal with the Board nor to pursue discovery against persons not parties to these proceedings. The only question before the Board is whether the Applicants' Verified Notice of Exemption, filed

September 23, 2005, should be declared null and void *ab initio*, because it contained false or misleading information, and the answer to that question can be found short of the draconian measures which the Applicants propose.

Petitioners, in their Statement filed December 23, 2005, in Support of their Petition to Have Applicants' Notice Declared Null and Void advanced five reasons why in their opinion the Applicants' Verified Notice of Exemption contained false and misleading information. One of these was that, contrary to Applicants' assertion, the Oklahoma City railroad line they propose to abandon pursuant to the two-year out-of-service exemption of 49 C.F.R. 1552.50, had been used to handle local traffic within the preceding two years. Petitioners, based upon their observations and their conversations with personnel of the companies, identified four companies which are situated on, or accessed via, the line sought to be abandoned and which had received service from one or another of the Applicants within the past two years.

The "Highly Confidential" version of Petitioners' Statement filed under seal with the Board gave the names and addresses of the four companies. Thus, it would be a simple matter for Director Melvin F. Clemens, Jr., of the Office of Compliance and Enforcement or another Board designee to contact the four companies, inquire of them whether they are situated on, or are accessed via, the line which the Applicants propose to abandon and learn from them whether they recall having been served by one or another of the Applicants between September 24, 2003, and September 23, 2005.<sup>1</sup>

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<sup>1</sup> Indeed, counsel for the Applicants, having signed the required undertakings, received copies of the "Highly Confidential" version of the Petitioners' Statement, and, thus, they might have picked up the phone and called the companies, submitting the substance of their conversations in "Highly Confidential" affidavits filed under seal with the Board.

In their Verified Notice of Exemption, Applicants acknowledge that they had been asked by the Oklahoma Department of Transportation to abandon the line so that portions of the right-of-way might be used for the relocation of Crosstown Interstate Highway I-40. The highway's relocation literally and figuratively has divided Oklahoma City, with feelings running high among those supporting and opposing the project. It was for that reason that the four companies did not wish to be publicly identified, lest they be the subjects of retribution by the Oklahoma Department of Transportation and the businesses or individuals which would gain from the highway's relocation, including, of course, the Applicants. Petitioners, accordingly, assured the four companies that they would not disclose their identity and safeguard their confidentiality.

The relief which Applicants seek would result in a breach of the commitment which Petitioners made, for it would disclose the identity of the four companies to the very railroads whose retribution they feared. If there were no other way that Petitioners were able to persuade the Board to deny Applicants the extraordinary relief they seek, Petitioners would agree to have paragraph number 2 stricken from their Statement, filed December 23, 2005,<sup>2</sup> and rely upon the other four grounds in urging that the Applicants' Verified Petition of Exemption be declared null and void *ab initio*, because it contained false and misleading information.

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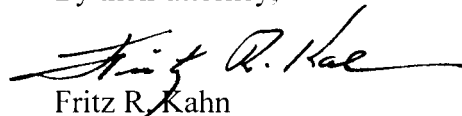
<sup>2</sup> Inadvertently, the paragraphs of Petitioners' December 23, 2005, pleading were misnumbered, and the reference is to the first of the paragraph number 2 and not the second.

WHEREFORE, Petitioners, Bio-Energy Wellness Center and North American Transportation Institute, ask that the Motion which Applicants, BNSF Railway Company and Stillwater Central Railroad, Inc., filed December 29, 2005, be denied.

Respectfully submitted,

BIO-ENERGY WELLNESS CENTER  
NORTH AMERICAN TRANSPORTATION INSTITUTE

By their attorney,




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Dated: January 3, 2006

#### CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing Reply upon BNSF Railway Company and Stillwaater Central Railroad, Inc., by facsimile transmitting and mailing copies thereof by prepaid first-class mail to their counsel, Sidney L. Stickland, Jr., Esq., and Karl Morell, Esq.

Dated at Washington, DC, this 3<sup>rd</sup> day of January 2006.

  
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Fritz R. Kahn